

In the Matter of Merchant Mariner's Document No. Z-906112 and all
Other Licenses, Certificates and Documents
Issued to: WILLIAM H. WALDROP

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

826

WILLIAM H. WALDROP

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 13 January 1955, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Merchant Mariner's Document No. Z-906112 issued to WILLIAM H. WALDROP upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an ordinary seaman on board the American SS ALCOA CORSAIR under authority of the document above described, on or about 22 December 1954, while said vessel was at sea, he assaulted and bettered, with his fists, a crew member named Bobbie B. Spears.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of Spears and several other members of the crew. Spears stated that Boatswain Morris a fight with Spears and then withdrew when Appellant attacked Spears and knocked him to the deck while he was trying to get away from Appellant. Spears claimed that he did not strike anyone but that he was kicked and beaten by Appellant and Dunn, another crew member.

In defense, Appellant Offered in evidence his sworn testimony as well as that of Boatswain Morris and Dunn. The Boatswain testified that he was hit in the stomach by Spears after telling him not to spill paint on the deck; and then Spears and Appellant started scuffling. Appellant testified that Spears hit the Boatswain when he stopped and said something to Spears; Appellant stopped in between the two men and grabbed Spears to restrain him; Spears started to strike Appellant and he struck back; and

Appellant fell on top of Spears when both of them fell on deck.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-906112, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

From that order, this appeal has been taken, and it is urged that:

1. The evidence failed to sustain the charge and specification by clear and unmistakable proof.
2. The testimony of Spears is wholly uncorroborated and it is contradicted by the testimony of appellant and other witnesses. The Examiner accepted incredulous statements made by Spears.
3. The findings are contrary to the law and the evidence. Spears' injuries can easily be explained by the fact that Appellant and Spears crashed to the deck after Appellant stepped in to protect the older Boatswain against Spears.
4. Appellant was not the aggressor because he had a right to go to defense of the Boatswain when he was in danger and in need of assistance.

In conclusion, it is respectfully submitted that Appellant's conduct was justified and, in any event, the order of six months suspension is excessive since Spears was not an officer; it was a simple assault without a weapon; in any event, the order of six months suspension is excessive since Spears was not an officer; it was a simple assault without a weapon; Appellant was acting in defense of the Boatswain, the injuries received by Spears were superficial as indicated by the fact that he appeared at the hearing on the day after the incident occurred; and Appellant has no prior record of misconduct with the Coast Guard.

APPEARANCES: Messrs. Dodd, Hirsch and Barker of New Orleans, Louisiana, by Harold J. Lamy, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 22 december 1954, Appellant was serving as an ordinary seaman on board the American SS ALCOA CORSAIR and acting under authority of his Merchant Mariner's Document No. Z-906112 while the ship was en route from Mobile to New Orleans.

At about 1630 on this date, seaman Spears was painting the bitts on deck when Boatswain Morris passed, somewhat under the influence of intoxicating liquors, and almost kicked over the bucket of paint which Spears was using. When Spears called the bulwark. An argument followed and the two men started to fight. Appellant joined the affray on the side of the Boatswain and the latter then withdrew from active participation in the fight. Spears tried to stop the fight by leaving the scene, but he was knocked to the deck by Appellant and severely beaten by him. Spears received treatment at the U. S. Public Health Service Hospital for numerous bruises and injuries to his ear, face, elbow, shoulder and ribs. Appellant was not injured.

There is no record of prior disciplinary action having been taken against Appellant by the U. S. Coast Guard.

OPINION

Due to the considerable amount of conflicting testimony in the record this case presented questions of credibility to be determined by the Examiner. Based on his personal observation of the witnesses, the Examiner accepted the testimony of Spears and specifically stated that he rejected material portions of the testimony of Appellant and Boatswain Morris. The above findings of fact are in accord with the findings of the Examiner in all material respects.

Several of the eyewitnesses to the incident stated that they did not see blows struck and Spears claimed that he did not strike anyone. This testimony does not agree with the only logical conclusion that Spears was fighting with the Boatswain first and then with Appellant.

The Examiner accepted Spears' testimony that the Boatswain started the fight and that Spears was trying to run away from Appellant after he started fighting with Spears. Appellant admitted that he initiated his fight with Spears and another witness corroborated the testimony of Spears that he was trying to get away from Appellant. This testimony support the conclusion of the Examiner that Spears was not the aggressor and that Appellant's attack on Spears was completely unjustified.

In the first place, there was no justification for

interference by Appellant since the Boatswain was the original aggressor. It is also noted that there is no evidence of any injuries received by the Boatswain or that he was in such danger as to require assistance. Secondly, Appellant went much further than was necessary to stop the fight between Spears and the Boatswain. This is evidenced by Spears' injuries and the fact that he attempted to leave the scene when attacked by Appellant. Spears' version as to how he received his injuries is much more probable than the possibility that he was injured by Appellant falling on top of Spears on the deck. Although Appellant appeared at the hearing on the day after the incident, his injuries were serious enough to require hospital treatment. Consequently, it is my opinion that Appellant used excessive force regardless of who was the original aggressor between Spears and the Boatswain.

Other points raised by Appellant concerning various details in the record may have some merit but they are not considered to be material to the basic issue. Therefore, I conclude that the charge and specification are supported by the required substantial evidence. In view of the unprovoked nature of the Battery and the extent of the injuries received by Spears, the order of six months suspension is not considered to be excessive regardless of Appellant's prior clear record.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 13 January 1955 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 3rd day of August, 1955.